

LIVESTOCK

CHAPTER 286

SENATE BILL NO. 2196

(Senators Klein, Flakoll)

(Representatives Glassheim, Wrangham)

BOARD OF ANIMAL HEALTH MEMBERSHIP

AN ACT to amend and reenact section 36-01-01 of the North Dakota Century Code, relating to membership of the state board of animal health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-01-01 of the North Dakota Century Code is amended and reenacted as follows:

36-01-01. State board of animal health - Appointment - Terms - Qualifications.

1. The state board of animal health consists of ~~eight~~ nine members appointed by the governor for terms of seven years each with their terms of office so arranged that two terms expire on the first day of August in one year and one term expires on the first day of August in each of the next six years. The term of the individual appointed to represent the nontraditional livestock industry expires on August 1, 2010. No individual may be appointed to more than two 7-year terms on the board.
2. Each member of the board must be a qualified elector of this state. Each member of the board, immediately after appointment, shall take the oath of office required of civil officers.
3. The members of the board must include:
 - a. One individual who is actively engaged and financially interested in the commercial beef cattle industry and who shall represent the industry on the board;
 - b. One individual who is actively engaged and financially interested in the registered purebred beef cattle industry and who shall represent the industry on the board;
 - c. One individual who is actively engaged and financially interested in the dairy cattle industry and who shall represent the industry on the board;
 - d. One individual who is actively engaged and financially interested in the swine industry and who shall represent the industry on the board;

- e. One individual who is actively engaged and financially interested in the sheep industry and who shall represent the industry on the board;
 - f. One individual who is actively engaged and financially interested in the bison industry and who shall represent the industry on the board; ~~and~~
 - g. ~~Two individuals~~ One individual who is actively engaged and financially interested in the nontraditional livestock industry and who shall represent the industry on the board; and
 - h. Two individuals who are licensed veterinarians.
4. Vacancies occurring prior to the expiration of terms of office must be filled by appointment by the governor and must be for the balance of the unexpired term.
 5. Recommendations for the appointment of individuals to the board may be made to the governor by the North Dakota stockmen's association for the individuals representing commercial beef cattle, by the various registered purebred beef cattle associations for the individual representing the registered purebred beef cattle industry, by the various dairy breed associations for the individual representing the dairy cattle industry, by the North Dakota swine breeders' association for the individual representing the swine industry, by the North Dakota wool growers' association for the individual representing the sheep industry, by the state veterinary medical association for the two veterinarians, by the North Dakota buffalo association for the individual representing the bison industry, by the nontraditional livestock industry for the individual representing the nontraditional livestock industry, and by any associations within this state representing livestock industries as the governor may permit. Two recommendations must be submitted for each position to be filled.

Approved April 4, 2003
Filed April 4, 2003

CHAPTER 287

SENATE BILL NO. 2209

(Senators Erbele, Bowman, Taylor)
(Representatives DeKrey, Froelich, Nicholas)

BRAND RECORDING AND ESTRAYS

AN ACT to create and enact five new sections to chapter 36-09 of the North Dakota Century Code, relating to brand ownership, recording, and inspection; to amend and reenact sections 36-09-02.1, 36-09-04, 36-09-06, 36-09-09, 36-09-10, 36-09-13, 36-09-20, 36-09-23, 36-13-01, 36-13-02, 36-13-03.1, 36-13-04, 36-13-05, 36-13-06, 36-13-07, 36-13-08, 36-22-01, and 36-22-06 of the North Dakota Century Code, relating to brand recording, cancellation, and inspection, bills of sale, and estrays; to repeal sections 36-09-03 and 36-13-03 of the North Dakota Century Code, relating to brands or marks on poultry and the sale of estrays; to provide a penalty; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-09-02.1 of the North Dakota Century Code is amended and reenacted as follows:

36-09-02.1. Standards for recording brands or marks.

1. The chief brand inspector shall record the brand or mark described in the application except that the chief brand inspector shall refuse to record any brand or mark that:
4.
 - a. ~~That has~~ Has been ~~previously~~ recorded in favor of another person ~~or one that is.~~
 - b. Has been recorded in another state.
 - c. Is deceptively similar to any previously recorded livestock brand or mark. ~~The same or similar livestock brand or mark which is to be placed on a different part of the animal from that described in the previous record may be recorded.~~
2.
 - d. ~~That contains~~ Contains less than two characters, ~~except that a single character brand may be recorded for sheep and goats, or one that contains any of the following characters:.~~
 - a. e. The letters Contains:
 - (1) The letter "g" or;
 - (2) The letter "q" or letters that are;
 - (3) Any letter not in the gothic style;.
 - (4) A dot;

- b. (5) The Arabic ~~numerals~~ numeral "0" or "1" ~~or any~~;
 - (6) ~~Any non-Arabic numerals.~~ numeral;
 - e. (7) Any ~~symbols~~ symbol other than ~~permissible symbols.~~ ~~Permissible symbols are limited to the following:~~ a diamond, a half-diamond, an arrow, a mill iron, a cross, a heart, a box, a triangle, a quarter circle, a bar, or a star-
3. That involves any letters, numerals, or symbols; and
- (8) Any letter, number, or symbol within another letter, ~~numeral~~ number, or symbol.
4. f. That is ~~illegible~~ is not legible when placed on the livestock.
5. g. That ~~indicates placement~~ Would be placed upon each kind of the livestock in a location other than a permissible location.
2. ~~Permissible~~ For purposes of this section, permissible locations for cattle are the left and right shoulder, the left and right rib, and the left and right hip. Permissible locations for horses and mules are the left and right jaw, the left and right shoulder, and the left and right hip. Permissible locations for buffalo are the left and right rib, and the left and right hip. The chief brand inspector may determine permissible locations for other types of livestock must be established by the chief brand inspector as necessary. The determination of permissible locations under this section may not be considered as a rule is not subject to rulemaking under chapter 28-32.
3. Notwithstanding any ~~provisions~~ other provision of this section ~~to the contrary~~, the chief brand inspector shall accept for rerecording under section 36-09-09 ~~any~~ or under section 5 of this Act:
- a. Any previously recorded livestock brand or mark.
 - b. A single character brand provided the animals on which the brand is to be placed are goats or sheep.

SECTION 2. AMENDMENT. Section 36-09-04 of the North Dakota Century Code is amended and reenacted as follows:

36-09-04. Record of brands kept - Inspection of record - Certificate of brand ownership of brand. The chief brand inspector shall keep a record of all marks and brands showing the names and residences of the persons owning the marks and brands, a description and facsimile of each mark or brand, and in the case of livestock, the range occupied by the livestock, as nearly as may be determined. The record is open to ~~the inspection of~~ by any person interested therein. The chief brand inspector shall deliver to the owner of each mark or brand a certificate ~~thereof, and~~ of the mark or brand. The certificate is evidence of ownership of the mark or brand described ~~therein~~ in the certificate.

SECTION 3. AMENDMENT. Section 36-09-06 of the North Dakota Century Code is amended and reenacted as follows:

36-09-06. Cancellation of brand.

1. The chief brand inspector shall cancel a legally recorded brand ~~only~~ when ~~the~~:
 - a. ~~The~~ chief brand inspector receives for filing a bill of sale of ~~such~~ the brand properly executed by the record owner as shown by the records in the chief brand inspector's office; ~~or in instances where~~
 - b. When it is found that a brand has been issued inadvertently in duplication of a previously recorded brand.
2. The chief brand inspector may cancel a legally recorded brand if the chief brand inspector determines that the brand has been recorded in another state.

SECTION 4. AMENDMENT. Section 36-09-09 of the North Dakota Century Code is amended and reenacted as follows:

36-09-09. Cancellation of brands - Rerecording - Limitation on brands.

On the first day of January 1966, each ~~and every~~ livestock brand or mark must be canceled and no person, ~~copartnership, company, firm, or corporation~~ may use or have any right, title, or interest in or to any livestock brand or mark previously recorded in this state. If a person, ~~copartnership, company, firm, or corporation~~ should desire to continue ownership ~~thereof~~ of a brand or mark, the brand or mark must be rerecorded on or before January first, and each ten years thereafter. Rerecording is not required from an owner who has registered for a new brand within six months prior to the date provided for the rerecording of brands ~~thereafter~~.

SECTION 5. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

Cancellation of brands - Rerecording - Limitation on brands. On the first day of January 2006, each livestock brand or mark must be canceled and no person may use or have any right, title, or interest in or to any livestock brand or mark previously recorded in this state. If a person should desire to continue ownership of a brand or mark, the brand or mark must be rerecorded on or before January first, and every five years thereafter. Rerecording is not required from an owner who has registered for a new brand within six months before the date provided for the rerecording of brands.

SECTION 6. AMENDMENT. Section 36-09-10 of the North Dakota Century Code is amended and reenacted as follows:

36-09-10. Brands to be rerecorded every ten years Failure to rerecord brand - Abandonment. Failure to rerecord any previously recorded livestock brand or mark on or before the time specified, ~~in accordance with this chapter, section 36-09-09 or section 5 of this Act~~ is deemed an ~~absolute~~ abandonment of the previously recorded ~~livestock~~ brand or mark. For one year from the date of cancellation, the chief brand inspector may not reassign a canceled brand or mark to any person other than the registered owner at the time of cancellation. By written notice to the chief brand inspector, the registered owner at the time of cancellation may authorize reassignment of the brand or mark within the one-year period. Thereafter the chief brand inspector shall accept any regular application for the issuance to anyone of the abandoned livestock brand or mark, provided the

abandoned livestock brand or mark complies with the standards of section 36-09-02.1. The chief brand inspector shall issue a certificate for the use of the abandoned brand or mark within this state, ~~except that the brand or mark may not be issued if it consists of a single figure or single letter~~ provided the abandoned livestock brand or mark complies with the standards of section 36-09-02.1.

SECTION 7. AMENDMENT. Section 36-09-13 of the North Dakota Century Code is amended and reenacted as follows:

36-09-13. Recording and rerecording of brands - Fee. The rerecording of abandoned livestock brands or marks, and the recording of new brands and marks, must conform ~~in all respects~~ to this chapter. Each application for recording and rerecording must be accompanied by a fee for each place or position upon each type of livestock where the brand or mark is to be placed. ~~The fee must be set by the board of animal health, upon the recommendation shall establish the fee, with the advice and consent of the North Dakota stockmen's association, and.~~ The fee may not exceed ~~fifteen~~ twenty-five dollars.

SECTION 8. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

Use of unrecorded brand - Penalty. A person is guilty of a class B misdemeanor if the person places upon an animal a brand that has not been recorded in accordance with this chapter.

SECTION 9. AMENDMENT. Section 36-09-20 of the North Dakota Century Code is amended and reenacted as follows:

36-09-20. Bill of sale to be given and kept - Copy with shipment - Effect - Penalty.

1. ~~No~~ A person may not sell cattle, horses, mules, or any other livestock carrying a registered brand unless:
 4. a. The seller is the owner of the registered brand and delivers a bill of sale for the cattle, horses, mules, or other livestock to the purchaser; or
 2. b. The seller delivers to the purchaser a bill of sale executed by the owner of the registered brand and endorsed by the seller evidencing the later transaction.
2. The bill of sale must ~~contain the~~ include:
 - a. The date, signature, and residence;
 - b. The name, address, and signature of the seller and;
 - c. The name, address, and signature of an individual who is at least eighteen years of age and who can verify the name and signature of the seller;
 - d. The name and address of the buyer, and showing the;
 - e. The total number of animals sold, describing;

- f. A description of each animal sold as to sex and kind; and describing
- g. A description of the registered brands.
3. The bill of sale must be kept by the buyer for two years and as long thereafter as ~~he~~ the buyer owns any of the animals described ~~therein~~ in the bill of sale.
4. A copy of the bill of sale must be given to each hauler of ~~such~~ the livestock, other than railroads, and must go with the shipment of ~~such~~ stock the livestock while in transit.
5. ~~Such~~ The bill of sale or a copy of the bill of sale must be shown by the possessor on demand to any peace officer or brand inspector.
6. ~~Such~~ The bill of sale is prima facie evidence of the sale of the livestock ~~therein~~ described; ~~provided, that no such~~ in the bill of sale.
7. A bill of sale is not required relative to sales of livestock covered by a legal livestock brand inspection.
8. Any ~~violation of~~ person who violates this section is guilty of an infraction.

SECTION 10. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

False proof of ownership - Sale of livestock - Penalty. A person that knowingly provides false proof of ownership in conjunction with the sale of livestock is guilty of a class B misdemeanor.

SECTION 11. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

Proof of ownership - Alteration or falsification - Penalty. A person that, with intent to deceive or harm another, knowingly and falsely makes, completes, or alters any writing evidencing proof of livestock ownership is guilty of a class B felony.

SECTION 12. AMENDMENT. Section 36-09-23 of the North Dakota Century Code is amended and reenacted as follows:

36-09-23. Removal of livestock from state - Brand inspection - Penalty.

1. No person may remove cattle, horses, or mules from this state or to within a mile [1.61 kilometers] of any boundary of the state for the purpose of removal unless the livestock has been inspected for marks and brands by an official brand inspector of the North Dakota stockmen's association and a certificate of inspection must accompany the livestock to destination. ~~In lieu of the inspection, the owner or possessor may make and sign an invoice or waybill covering the stock showing marks and brands, number, sex and kind of the stock, and the consignee and market destination where official brand inspection is provided by or for the stockmen's association and mail a copy of the invoice or waybill to the association before the stock leaves the state.~~

2. It is unlawful for the owner or possessor to remove any livestock from any place of regular official brand inspection unless and until official brand inspection has been made and the brand inspection certificate issued.
3. A person who violates this section is guilty of a class B misdemeanor. A person who violates this section a second time within fifteen years or violates this section three or more times is guilty of a class C felony.

SECTION 13. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

Brand inspection services - Out-of-state facilities. An out-of-state livestock facility that seeks to obtain brand inspection services from this state may file a written request with the North Dakota stockmen's association. Upon receiving a request for brand inspection services, the North Dakota stockmen's association shall petition the board of animal health for permission to provide the services. The board of animal health shall adopt rules setting forth the criteria that must be met before out-of-state brand inspections are approved.

SECTION 14. AMENDMENT. Section 36-13-01 of the North Dakota Century Code is amended and reenacted as follows:

36-13-01. Estrays - Possession. Any A person may take possession of an animal as an estray when it is on property which he that the person owns or controls, and when he provided the person does not know who is the owner of owns the animal estray. As soon as practicable he shall make careful examination of the said animal the person shall examine the estray to determine the presence and identity of any brand upon it, the location thereof of the brand, and any other marks or scars which that may identify the same and he estray. The person shall notify the sheriff of the county wherein in which the estray was found of such action, who or the chief brand inspector. Once notified, the sheriff or the chief brand inspector shall record the date and time of the notification and all information obtained by him as to brands or other marks and location from the person which may be helpful in determining ownership thereof of the estray. The chief brand inspector shall direct a brand inspector to examine the estray for marks and brands.

SECTION 15. AMENDMENT. Section 36-13-02 of the North Dakota Century Code is amended and reenacted as follows:

36-13-02. Estray notice by sheriff Estrays - Notification of chief brand inspector. Upon notification When notified of an estray possession, the notified a sheriff shall forthwith publish a notice in the official county newspaper once weekly for two weeks unless the animal is earlier claimed or sold, whichever is earlier. Two or more animals which are taken up by the same person at the same time may be described in one notice.

The published notice must be on a form prescribed by the chief brand inspector, and at the time of first publication of any notice must be forwarded to him for his files and the chief brand inspector shall send an official brand inspector to examine the animal for marks and brands and report his findings to the chief brand inspector and the sheriff. The notice must briefly describe the estray by color, sex, probable age and weight, and any distinctive brand or marks, and must show the date and place of taking up as well as the name and address of possessor contact the chief brand inspector and provide to the chief brand inspector any identifying or descriptive information regarding the estray.

SECTION 16. AMENDMENT. Section 36-13-03.1 of the North Dakota Century Code is amended and reenacted as follows:

36-13-03.1. Alternate disposition of estray. ~~In lieu of disposition of an animal as an estray as directed in the preceding section of this chapter, any A person finding that finds an estray upon his premises the ownership of which is unknown to him on property that the person owns or controls may dispose of the same estray by delivering such animal it to a public livestock market licensed under the laws of by this state as soon as practical after discovery of such animal upon his premises, provided he the person first makes a reasonable effort to determine the ownership thereof. At the time of delivery of an estray as provided in this section, the person so delivering of the estray. The person shall inform the brand inspector that the animal is being delivered as is an estray. Such animal, The estray and the proceeds of the its sale thereof, must thereupon be disposed of as provided in chapter 36-22.~~

SECTION 17. AMENDMENT. Section 36-13-04 of the North Dakota Century Code is amended and reenacted as follows:

36-13-04. Claiming estrays. ~~When If before the sale of an estray the owner of an the estray, prior to the sale thereof, presents to the person in possession of the animal his possessing the estray an affidavit stating his that includes the owner's name, place of residence and that he is the actual owner of the estray, describing it, then, a declaration of ownership, and a description of the estray, the person in possession of the animal possessing the estray shall release it to the claimant owner on payment of the all lawful charges. The person formerly in possession shall then promptly send the affidavit to the sheriff, who shall file and keep the same as record of the disposition of the estray. After there has been a sale of an estray under the provisions of this chapter, the former owner of an estray has no rights in the animal.~~

~~If the former owner of an estray files his verified claim with the board of county commissioners within one year after the date of the estray sale, and proves his former ownership to the satisfaction of the board, it shall order paid to the former owner and any lienors, as their interests may appear, the balance from the sale which is in the county treasury.~~

SECTION 18. AMENDMENT. Section 36-13-05 of the North Dakota Century Code is amended and reenacted as follows:

36-13-05. Lawful charges.

1. ~~Any A person lawfully taking that takes possession of an estray in accordance with this chapter may charge for any actual damage done to his the person's crops or premises property by the animal, his actual costs of estray.~~
2. ~~A person that takes possession of an estray in accordance with this chapter may charge for any costs incurred after the person has notified either the sheriff or the chief brand inspector, provided the costs were incurred for the care and feeding and caring for it, and any expenses incurred of the estray or were incurred in complying with this chapter, provided that no costs, charges, or expenses may be allowed which were incurred prior to notifying the sheriff that the animal was taken up except damage to crops or premises.~~

3. If the ~~interested parties~~ person who takes possession of the estray and the owner of the estray cannot agree as to the amount of charges that are payable, each shall choose one person and the two so chosen shall choose a third person and then the . The three persons so chosen shall arbitrate and determine the amount of the charges. ~~The~~ A determination of ~~these arbitrators~~ under this subsection is final if ~~no sale of the animal has been had.~~ In the event of a sheriff's sale the sheriff shall determine the amount of the charges to be received by the person taking possession of the estray.

SECTION 19. AMENDMENT. Section 36-13-06 of the North Dakota Century Code is amended and reenacted as follows:

36-13-06. Liability for failure to give proper notice.

1. Any person ~~who~~ that takes up possession of an estray and is liable to the owner of the estray for treble damages if the person fails to:
4. Fails to make reasonable examination of the animal
- a. Examine the estray to determine the presence of brands or marks or scars to identify the same as herein required and identity of any brand, mark, or scar; and
2. Fails to notify
- b. Notify either the sheriff or the chief brand inspector as provided in this chapter, is liable to the owner thereof for triple all damages caused thereby, and.
2. A person liable for damages under subsection 1 may not make any claim or charge, or seek damages in connection with the animal estray.

SECTION 20. AMENDMENT. Section 36-13-07 of the North Dakota Century Code is amended and reenacted as follows:

36-13-07. Liability for death, theft, or escape of estray. If the person ~~who~~ that takes up possession of an estray notifies either the sheriff or the chief brand inspector, as provided in this chapter, ~~he~~ the person is not ~~responsible~~ liable if, without his fault, ~~such~~ on the part of the person, the estray thereafter dies, is stolen, or escapes and wanders away.

SECTION 21. AMENDMENT. Section 36-13-08 of the North Dakota Century Code is amended and reenacted as follows:

36-13-08. Taking up estray - Compliance with chapter - Penalty. Any person ~~taking up~~ that takes possession of an estray ~~who~~ and willfully fails to comply with ~~the provisions~~ of this chapter is guilty of a class B misdemeanor.

SECTION 22. AMENDMENT. Section 36-22-01 of the North Dakota Century Code is amended and reenacted as follows:

36-22-01. Estray defined. Any marked or branded cattle, horse, or mule found at any livestock market, to which a shipper cannot produce title or satisfactory evidence of ownership, is considered as to be an estray.

SECTION 23. AMENDMENT. Section 36-22-06 of the North Dakota Century Code is amended and reenacted as follows:

36-22-06. Payment to owners of estrays. The secretary of ~~said~~ the North Dakota stockmen's association, upon satisfactory proof of ownership of any estray for which the association has received the money, shall, with the approval of the board of directors of ~~said~~ the association, pay ~~such~~ the owner of the estray the amount received from the sale of ~~such~~ the estray; provided, ~~however,~~ that ~~such~~ the ownership of the estray must be proven within one year after the publication of the notice provided for in section 36-22-07. Any interest earned on the money reverts to the North Dakota stockmen's association fund.

SECTION 24. REPEAL. Sections 36-09-03 and 36-13-03 of the North Dakota Century Code are repealed.

SECTION 25. EFFECTIVE DATE. Section 5 of this Act becomes effective on July 1, 2006.

SECTION 26. EXPIRATION DATE. Section 4 of this Act is effective through June 30, 2006, and after that date is ineffective.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 288

HOUSE BILL NO. 1503

(Representative Monson)

(Senator Erbele)

(Approved by the Delayed Bills Committee)

LIVESTOCK RUNNING AT LARGE

AN ACT to create and enact a new section to chapter 36-11 of the North Dakota Century Code, relating to livestock; to amend and reenact sections 36-11-01, 36-11-07, 36-11-09, 36-11-10, 36-11-11, 36-11-12, 36-11-13, 36-11-14, 36-11-15, 36-11-16, 36-11-17, 36-11-18, 36-11-19, and 36-11-20 of the North Dakota Century Code, relating to livestock running at large; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 36-11 of the North Dakota Century Code is created and enacted as follows:

Livestock - Definition. As used in this chapter, "livestock" includes bison, cattle, goats, horses, mules, sheep, and swine.

SECTION 2. AMENDMENT. Section 36-11-01 of the North Dakota Century Code is amended and reenacted as follows:

36-11-01. ~~Stock~~ Livestock running at large prohibited - Penalty. No ~~cattle, horses, mules, swine, goats, or sheep~~ livestock may be permitted to run at large. Any owner or possessor of ~~any such animal~~ livestock who willfully permits ~~it~~ the livestock to run at large through failure to maintain a lawful fence as provided in ~~section 47-26-01~~, except in grazing area as provided in section 36-11-07, is guilty of a class B misdemeanor.

SECTION 3. AMENDMENT. Section 36-11-07 of the North Dakota Century Code is amended and reenacted as follows:

36-11-07. Liability of owners of ~~horses, mules, cattle, sheep, goats, and swine~~ livestock injuring persons or property of others.

1. The owner or possessor of any ~~horse, mule, head of cattle, sheep, goat, or swine, which~~ livestock that inflicts ~~any~~ damage or injury to:
 - a. Motor vehicles or their occupants upon a public highway within a grazing area ~~wherein in which~~ proper signs, approved by the ~~state highway commissioner~~ director of the department of transportation, indicating limited liability are posted at a point adjacent to ~~such the~~ highway not less than two hundred feet [60.96 meters] nor more than four hundred feet [121.92 meters] from the entrance of ~~such the~~ highway into ~~such the~~ grazing area and so posted as to be plainly visible to ~~persons~~ individuals approaching ~~such the~~ entrance; or

- b. The crops or other property of another or trespasses upon the lands or premises of another, where ~~such~~ the damaged or injured crops, property, lands, or premises are located within a grazing area, except as provided in section 36-11-09, is not liable to any person sustaining ~~such~~ damages or injury.
2. For the purpose of this section, a "grazing area" means any area designated as ~~such~~ a grazing area by a majority of the board of county commissioners, either upon the motion of one of the ~~said~~ commissioners or upon presentation to the board of a petition signed by a majority of the real property owners and tenants in the area in which it is proposed that a grazing area be established. A grazing area must be used primarily for the purpose of grazing livestock and enclosed by a fence or other suitable means.
3. Except as provided above, the owner or possessor of any ~~horse, mule, head of cattle, sheep, goat, or swine~~ which livestock that inflicts any damage to the crops or other property of another or which trespasses upon the lands of another, whether ~~such~~ the lands are fenced or unfenced, is liable to the persons sustaining the injuries or to the owner of the lands for all damages suffered by ~~him~~ by the owner, together with the statutory costs of the action to recover ~~such~~ damages, and a reasonable attorney's fee ~~therein to be~~ allowed by the court.

SECTION 4. AMENDMENT. Section 36-11-09 of the North Dakota Century Code is amended and reenacted as follows:

36-11-09. Action permitted when livestock breaks through lawful fence.

Any person owning or having ~~in his charge~~ of any livestock ~~which that~~ goes through, over, or under any lawful fence is liable for all resulting damages. ~~Any animal which livestock that~~ goes through, over, or under a lawful fence is deemed a trespassing ~~animal~~ livestock for the purposes of this chapter.

SECTION 5. AMENDMENT. Section 36-11-10 of the North Dakota Century Code is amended and reenacted as follows:

36-11-10. Trespassing animals livestock may be distrained - Notice to owner - Security for release.

1. The person suffering damages by reason of the trespass of any livestock may take up the offending ~~animal or animals~~ livestock. The person suffering damages shall notify the owner, or the person in possession of the livestock at the time of the trespass, of the seizure of ~~such animal or animals~~ the livestock without unnecessary delay, if the owner or person in possession is known to the person suffering damages and is a resident of, and present within, the county in which the trespass occurred. The person suffering damages may retain ~~such animal or animals~~ the livestock in that person's custody until:
- 4- a. The damages sustained by reason of ~~such~~ the trespass and the costs in the action to recover ~~such~~ the damages have been paid; or
- 2- b. Good and sufficient security for the payment of the damages and costs is given, ~~such provided the security to be~~ is approved by a district judge serving the county in which the livestock is taken up.

2. If the owner of the offending ~~animal or animals~~ livestock elects to give security, the owner shall give to the person holding the livestock notice that security will be given and the date and hour when ~~such~~ the security will be submitted to the district judge for approval. The notice must be given at least one day ~~prior to~~ before the date set for the submission of the security to the judge. The cost of serving notices required under this section may be taxed as costs in the action.
3. Where applicable, the provisions of section 36-11-07 may be raised as an affirmative defense in any proceedings under this section, and the owner or person entitled to possession of ~~such~~ the livestock may apply to a court of competent jurisdiction for the return of the livestock. If the court finds that the livestock ~~have~~ has been wrongfully distrained, the person who causes the livestock to be wrongfully distrained is liable for all damages suffered by the owner or person entitled to possession of the livestock, together with the costs of the action and reasonable attorney's fees.

SECTION 6. AMENDMENT. Section 36-11-11 of the North Dakota Century Code is amended and reenacted as follows:

36-11-11. Procedure when security given. When security for the payment of damages and costs is approved by the district judge, the judge shall issue an order directed to the person holding the livestock to deliver the ~~stock~~ livestock to the person entitled ~~thereto~~ to the livestock, and the officer receiving the order shall take the livestock and deliver it to the person. The cost of the proceedings may be charged as a part of the costs in the action to determine the rights of the parties regarding the livestock distrained for the trespass.

SECTION 7. AMENDMENT. Section 36-11-12 of the North Dakota Century Code is amended and reenacted as follows:

36-11-12. Notice of damages to owner of animal livestock before action is commenced. Before commencing any action for damages caused by the trespass of any livestock, the ~~party~~ person sustaining ~~such~~ the damages, if ~~he~~ the person knows to whom ~~such~~ the livestock belongs and the owner is a resident of, and is present in, the county in which the trespass occurred, shall notify ~~such~~ the owner, or the person having the ~~animals~~ livestock in charge, of ~~such~~ the nature and extent of the damage and the probable amount thereof.

SECTION 8. AMENDMENT. Section 36-11-13 of the North Dakota Century Code is amended and reenacted as follows:

36-11-13. When action for trespass of livestock must be commenced. A party claiming ~~damages~~ damage for trespass of livestock under ~~the provisions~~ of this chapter shall bring an action to recover the same within:

1. Sixty days after the infliction of ~~such damages~~ the damage if the offending ~~animals~~ livestock have been distrained by the person who has been damaged and a lien is sought to be impressed upon ~~such animals~~ livestock for the amount of ~~such~~ the damages.
2. Six years after the infliction of ~~such damages~~ the damage if the offending ~~animals~~ livestock have not been distrained by the person who has been damaged and no lien is sought to be impressed upon ~~such animals~~ the livestock for the amount of ~~such~~ the damages.

SECTION 9. AMENDMENT. Section 36-11-14 of the North Dakota Century Code is amended and reenacted as follows:

36-11-14. Procedure when keeper or owner of trespassing animals livestock is unknown. If the person suffering damage because of the trespass of livestock which has been taken up under ~~the provisions of~~ this chapter does not know the name of the owner or keeper ~~thereof, he of the livestock,~~ the person may bring an action against a ~~defendant an~~ unknown defendant. In such case, service must be made by publication of a copy of the summons, with a notice ~~annexed thereto~~ attached, stating the nature of the action, in at least one issue of a legal newspaper if one is published within the county, and if not, by posting copies of the summons and notice in three public places within the county. ~~Such~~ The publication or posting, ~~as the case may be,~~ must be made ~~not less than~~ at least ten days before the date of the trial. If it appears on the trial of any action brought to recover damages arising from the trespass of livestock that the person named in ~~such~~ the action and upon whom the summons ~~therein~~ was served is not the owner or person in charge of the offending ~~animals~~ livestock, the action must be dismissed as to ~~him~~ that person, and service must be made, and the action must proceed, as in a case in which the name of the owner or keeper of the offending ~~animals~~ livestock is unknown.

SECTION 10. AMENDMENT. Section 36-11-15 of the North Dakota Century Code is amended and reenacted as follows:

36-11-15. Proof on trial of action for trespass of livestock. Upon the trial of an action brought under ~~the provisions of~~ this chapter, the plaintiff shall prove:

1. The amount of ~~damages~~ damage sustained by ~~him~~ the plaintiff by reason of the trespass; and
2. If ~~he~~ the plaintiff has distrained the ~~animals~~ livestock committing the trespass, the amount of expense incurred in distraining and keeping the ~~same~~ livestock.

SECTION 11. AMENDMENT. Section 36-11-16 of the North Dakota Century Code is amended and reenacted as follows:

36-11-16. Judgment for plaintiff is lien on offending animals livestock. Any judgment rendered for damages against the defendant in an action brought under ~~the provisions of~~ this chapter is a lien upon the ~~animals~~ livestock committing the trespass if ~~such animals~~ the livestock were distrained by the plaintiff, and ~~such animals~~ the livestock may be sold as in other cases of sale of personal property on execution, and the proceeds of the sale applied to the satisfaction of the judgment, and the ~~animals~~ livestock are not exempt from seizure and sale upon ~~such~~ execution.

SECTION 12. AMENDMENT. Section 36-11-17 of the North Dakota Century Code is amended and reenacted as follows:

36-11-17. Collection of judgment against unknown defendant - Disposition of surplus. After a judgment has been rendered against an unknown defendant as provided in section 36-11-14, the ~~offending animals~~ livestock, or so many of them as may be necessary, must be sold in the same manner as personal property is sold upon execution. Any surplus remaining from ~~such~~ the sale after the judgment and the costs in the action have been paid must be paid to the county treasurer for the benefit of the owner ~~thereof~~, and if the owner does not appear and

claim the ~~same~~ surplus within six months ~~thereafter~~, it must be paid into the ~~school common schools trust fund~~ for the use of the public schools ~~of the county~~.

SECTION 13. AMENDMENT. Section 36-11-18 of the North Dakota Century Code is amended and reenacted as follows:

36-11-18. When judgment of original court final - Right to trial by jury. In all actions brought under ~~the provisions of~~ this chapter, if the amount of damages claimed does not exceed twenty-five dollars, the judgment of the court having original jurisdiction is final. Either party to ~~such~~ the action may have a jury trial upon a demand ~~therefor~~.

SECTION 14. AMENDMENT. Section 36-11-19 of the North Dakota Century Code is amended and reenacted as follows:

36-11-19. Taking ~~animals~~ livestock distrained - Penalty. Every person who, except by due course of law, takes, ~~or~~ advises, or assists in the taking of, any ~~animal~~ livestock distrained and held by virtue of ~~any provision of~~ this chapter, from the possession of the person having the ~~same in his charge~~ livestock, without the consent of the person holding ~~such animal~~ the livestock, is guilty of a class B misdemeanor.

SECTION 15. AMENDMENT. Section 36-11-20 of the North Dakota Century Code is amended and reenacted as follows:

36-11-20. Sheriff to return or impound livestock running at large - Expenses to be paid by owner. In the event of ~~any~~ a complaint by anyone suffering injury or damages or likely to suffer injury or damages as a result of livestock running at large contrary to ~~the provisions of~~ section 36-11-01, the sheriff of the county ~~wherein such~~ in which the livestock may be found shall return the livestock to the owner or impound the livestock and dispose of them as ~~stray animals~~ estrays under ~~the procedure set forth in~~ chapter 36-13. The expenses incurred by the sheriff or ~~his~~ the sheriff's agents in performing the duties required ~~of him~~ in this section must be paid by the owner of the livestock. If the owner cannot be found the sheriff's expense must be recovered from proceeds remaining after the disposal of ~~such animals~~ the livestock as estrays.

SECTION 16. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 289

SENATE BILL NO. 2201

(Senators Klein, Erbele, Nichols)
(Representatives DeKrey, Froelich)

BRUCELLOSIS VACCINATION

AN ACT to create and enact a new section to chapter 36-15 of the North Dakota Century Code, relating to waivers of requirements for calfhood vaccination against brucellosis; and to amend and reenact section 36-15-21 of the North Dakota Century Code, relating to requirements for calfhood vaccination against brucellosis.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-15-21 of the North Dakota Century Code is amended and reenacted as follows:

36-15-21. Calfhood vaccination against brucellosis required - Penalty.

1. ~~No~~ A person may not bring into this state or receive from outside this state any female cattle over the maximum vaccination age as prescribed in the brucellosis eradication uniform methods and rules approved and published by the United States department of agriculture, agriculture's animal and plant health inspection service, ~~that have not been unless the cattle have been~~ officially calfhood vaccinated against brucellosis. Female or a waiver has been granted by the board in accordance with section 2 of this Act. This subsection does not apply if the cattle originating originate from a free states that do state, a United States possession, or a Canadian province or territory, which does not require place requirements on North Dakota-origin female cattle to be regarding calfhood brucellosis vaccinated are exempt from the requirements of this section vaccinations or brucellosis testing before entry.
2. A person who brings female cattle into this state from ~~other a~~ reciprocating free states that reciprocate state, United States possession, or Canadian province or territory shall prove that the cattle were located in that state, possession, province, or territory for a period of at least sixty days. ~~"Officially calfhood vaccinated"~~
3. For purposes of this section, "officially calfhood vaccinated" means a bovine female animal bovine vaccinated against brucellosis ~~under the supervision of a federal or state veterinary official or an accredited veterinarian within age limits prescribed by the board in compliance with as prescribed in the brucellosis eradication uniform methods and rules approved by the United States department of agriculture uniform methods and rules,~~ with a vaccine approved by the North Dakota state veterinarian, and permanently identified as such a vaccinate and reported at the time of vaccination to the appropriate state or federal agency cooperating in the eradication of brucellosis. However, the board may grant an exception to the provisions of this section. An appeal may be taken from the decision of the board under the provisions of chapter 28-32. Any person who brings into this state, or

~~acquires within this state, any cattle contrary to the provisions of this section~~ agriculture's animal and plant health inspection service.

4. In addition to other penalties provided in this chapter, a person who violates this section is guilty of a class A misdemeanor.

SECTION 2. A new section to chapter 36-15 of the North Dakota Century Code is created and enacted as follows:

Calfhood vaccination against brucellosis - Waiver of requirements.

1. The board may waive the requirement set forth in section 36-15-21 if the person requesting the waiver obtains a form from the state veterinarian and submits the completed form to the board.
2. As a condition of granting the waiver, the board may require disease testing, vaccination, quarantine, and reporting, as well as any other actions the board determines necessary to protect the health and safety of domestic animals or nontraditional livestock.
3. If the board does not grant the application for waiver within one hundred twenty days from the date the application is received by the board, the application is deemed denied.
4. Any person aggrieved by a decision of the board has the right to receive an administrative hearing if the person files a written request for a hearing with the board within ten days from the date on which the board's determination regarding the waiver is received by the applicant or, if no response is received by the applicant, within ten days from the date the application is deemed denied under this section.

Approved April 4, 2003

Filed April 4, 2003

CHAPTER 290

HOUSE BILL NO. 1192

(Representatives Metcalf, Froelich, D. Johnson, Nelson)
(Senators Flakoll, Lindaas)

LIVE ANIMAL RAFFLE PRIZE VALUATION

AN ACT to amend and reenact subsection 2 of section 36-21.1-09 of the North Dakota Century Code, relating to the valuation of live animal raffle prizes; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 36-21.1-09 of the North Dakota Century Code is amended and reenacted as follows:

2. An eligible organization authorized to conduct games of chance under chapter 53-06.1 may raffle live beef or dairy cattle, bison, sheep, horses, and pigs, provided each raffle ticket contains a statement that the winner of person who wins the animal may convert that prize to a cash prize. The donor of the animal shall determine the amount market value of the cash prize, which animal. If the person who wins the animal desires a cash prize instead of the animal, the organization shall pay the player a cash prize that must be equivalent to equal the lesser of the market value of the animal and cannot exceed the limitations of or the maximum single cash prize amount allowed under section 53-06.1-10.1.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 291

SENATE BILL NO. 2220

(Senators Erbele, Christmann, Seymour)
(Representatives Froseth, F. Klein, Onstad)

POULTRY INSPECTIONS

AN ACT to amend and reenact sections 36-24-01 and 36-24-10 of the North Dakota Century Code, relating to poultry inspections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-24-01 of the North Dakota Century Code is amended and reenacted as follows:

36-24-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Adulterated" means a whole carcass, part of a carcass, or meat food product:
 - a. That bears or contains a poisonous or harmful substance that may render it injurious to health;
 - b. That bears or contains a chemical pesticide that is unsafe under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - c. That bears or contains a food or color additive that is unsafe under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - d. That contains a filthy, putrid, or decomposed substance or is for any other reason unfit for human food;
 - e. That has been prepared, packed, or held under unsanitary conditions;
 - f. That is wholly or partly the product of an animal that has died in a manner other than slaughter;
 - g. The container of which is wholly or partly composed of a poisonous or harmful substance that may make the contents harmful to health;
 - h. That has been intentionally subjected to radiation, unless the use of the radiation conformed with a regulation or exemption in effect under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - i. That is damaged or inferior and that damage or inferiority has been concealed; or

- j. That has had a substance added to it or mixed or packed with it so as to increase its bulk or weight, or make it appear better than or of greater value than it is.
2. "Animal" includes cattle, swine, sheep, goats, farmed cervidae, llama, ~~ratite~~, horses, equines, ~~and~~ other large domesticated animals, ~~not including and~~ poultry.
 3. "Commissioner" means the agriculture commissioner.
 4. "Container" includes a can, pot, tin, canvas, or other receptacle containing a meat food product.
 5. "Custom processing" means slaughtering, eviscerating, dressing, or processing an animal or processing meat products for the owner of the animal or of the meat products, if all meat products derived from the custom operation are returned to the owner of the animal or of the meat products.
 6. "Intrastate commerce" means commerce within this state.
 7. "Meat food product" means a product usable as human food and made wholly or in part from meat or a portion of an animal carcass. The term does not include any product that contains meat or other portions of the carcasses of animals in a relatively small proportion or which historically have not been considered by consumers as a product of the meat food industry, and which is not represented as a meat food product.
 8. "Poultry" includes domesticated chickens, ducks, geese, pheasants, quail, ratites, and turkeys.
 9. "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

¹³⁰ **SECTION 2. AMENDMENT.** Section 36-24-10 of the North Dakota Century Code is amended and reenacted as follows:

36-24-10. Individual and custom processing.

1. This chapter does not apply to an individual processing the individual's own animals and the individual's preparation and transportation in intrastate commerce of the whole carcasses, parts of carcasses, and meat food products provided the animals are for the exclusive use of the individual, members of the individual's household, the individual's nonpaying guests, and employees.
2. This chapter does not apply to the custom processing by a person of animals delivered by the owner for processing, and the preparation or transportation in intrastate commerce of the whole carcasses, parts of carcasses, and meat food products of the animals, provided that the

¹³⁰ Section 36-24-10 was also amended by section 1 of House Bill No. 1130, chapter 292.

products are to be used exclusively in the household of the animal's owner by the owner and members of the owner's household, nonpaying guests, and employees.

3. A custom processor may not engage in the business of buying or selling whole carcasses, parts of carcasses, or meat food products of animals, other than poultry, usable as human food unless the whole carcasses, parts of carcasses, or meat food products have been inspected and passed and are identified as inspected and passed by the commissioner or the United States department of agriculture.
4. The provisions of this chapter requiring inspection of the preparation of poultry carcasses and parts thereof, and poultry food products at establishments conducting those operations do not apply to any retailer with respect to poultry products sold in commerce directly to consumers in an individual retail store, provided that the retailer does not engage in the business of custom slaughter, and provided that the poultry products sold in commerce are derived from poultry inspected and passed by the commissioner or the United States department of agriculture.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 292

HOUSE BILL NO. 1130

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

CUSTOM MEAT PROCESSING

AN ACT to amend and reenact section 36-24-10 of the North Dakota Century Code, relating to custom processing of meat products; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³¹ **SECTION 1. AMENDMENT.** Section 36-24-10 of the North Dakota Century Code is amended and reenacted as follows:

36-24-10. Individual and custom processing - Exemption from inspection requirements.

1. This chapter does not apply to an individual processing the individual's own animals and the individual's preparation and transportation in intrastate commerce of the whole carcasses, parts of carcasses, and meat food products provided the animals are for the exclusive use of the individual, members of the individual's household, the individual's nonpaying guests, and employees.
2. ~~This chapter does not apply to~~ The provisions of this chapter requiring inspection of the slaughter of animals, the preparation of the carcasses and parts thereof, and meat and meat food products at establishments conducting such operations do not apply to the custom processing by a person of animals delivered by the owner for processing, and the preparation or transportation in intrastate commerce of the whole carcasses, parts of carcasses, and meat food products of the animals, provided that the products are to be used exclusively in the household of the animal's owner by the owner and members of the owner's household, nonpaying guests, and employees.
3. A custom processor may not engage in the business of buying or selling whole carcasses, parts of carcasses, or meat food products of animals usable as human food unless the whole carcasses, parts of carcasses, or meat food products have been inspected and passed and are identified as inspected and passed by the commissioner or the United States department of agriculture.

¹³¹ Section 36-24-10 was also amended by section 2 of Senate Bill No. 2220, chapter 291.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 293

SENATE BILL NO. 2198

(Senators Erbele, Christmann, Klein)
(Representatives Drovdal, D. Johnson, Solberg)

FARMED ELK INSPECTION CERTIFICATES

AN ACT to amend and reenact sections 36-14-04.1, 36-25-01, and 36-25-10 of the North Dakota Century Code, relating to certificates of veterinary inspection and farmed elk; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-14-04.1 of the North Dakota Century Code is amended and reenacted as follows:

36-14-04.1. Animals imported into state to have certificate of veterinary inspection - Exception.

1. Except as otherwise provided by this chapter or by rule, all domestic animals and nontraditional livestock brought into this state must be accompanied by a certificate of veterinary inspection certifying that the animals are free from symptoms of all contagious and infectious diseases, and that the animals meet disease testing and vaccination requirements prescribed by rule. Animals originating in other countries must be tested for diseases, as determined by the board, until a risk assessment is completed for the disease. If the board determines that an unacceptable risk exists, the board may deny entry, require additional testing, or require a vaccination.
2. The requirement for a certificate of veterinary inspection is waived for cattle, sheep, ~~or~~ bison, and swine originating directly from a producer's premises and not diverted en route, if the waiver is approved by the state veterinarian and the cattle, sheep, bison, or swine are delivered for sale directly to a licensed auction market or other premises approved by the state veterinarian.
3. The board may require certification indicating that animals entering this state from a foreign country and intended for human consumption have not been treated with drugs that are disallowed under federal law for use in animals intended for human consumption.
4. The board may adopt rules to implement this section.

SECTION 2. AMENDMENT. Section 36-25-01 of the North Dakota Century Code is amended and reenacted as follows:

36-25-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Board" means the state board of animal health.
2. "Commissioner" means the agriculture commissioner.

3. "Farmed elk" means mammals of the elk family (*cervus elaphus*), except red deer, confined in a manmade enclosure designed to prevent escape and:
 - a. Raised for fiber, meat, or animal byproducts; ~~or~~
 - b. Raised for breeding, exhibition, or harvest; or
 - c. Maintained for any other purpose.
4. "Owner" means a person who owns or is responsible for the raising of farmed elk.

SECTION 3. AMENDMENT. Section 36-25-10 of the North Dakota Century Code is amended and reenacted as follows:

36-25-10. Enforcement orders - Administrative hearing - Penalty.

1. The board may order any elk brought into this state in violation of this chapter or rules adopted by the board to be returned to the state of origin or to be slaughtered. The owner of the elk has the right to an administrative hearing on an order of the board in the manner provided in chapter 28-32 if the owner makes a written request for a hearing to the board within ten days after service of the order. If the owner does not request a hearing and if the owner fails to comply with the order, the state veterinarian shall carry out the order. The owner is liable to the board for all costs, including disease testing, incurred in carrying out the order.
2. If the board finds that a person has brought elk into this state, kept elk, or received elk in violation of this chapter or rules adopted by the board, the board may assess that person a civil penalty in an amount up to five thousand dollars per violation. Any person aggrieved by a decision of the board may appeal the decision as provided in chapter 28-32. The civil penalty assessed under this subsection must be in addition to any costs incurred by the board for enforcement of the order.
3. Any person who knowingly violates this chapter or any rule of the board is guilty of a ~~class A misdemeanor~~ an infraction.

Approved April 4, 2003
Filed April 4, 2003